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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,562	07/16/1999	DUNCAN AKPORIAYE	35/101053	6349

7590

05/07/2003

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EXAMINER

COLE, LAURA C

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

HG

**Office Action Summary**

Application No.

09/308,562

Applicant(s)

AKPORIAYE ET AL.

Examiner

Laura C Cole

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 December 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 18-22, 24, 29-33, and 35 [at issue they were renumbered to 1-5, 7, 12-16, and 18] are rejected under 35 U.S.C. 102(b) as being anticipated by Fernwood et al., USPN 4,493,815.

Fernwood et al. discloses a supporting and filtering biochemical test plate assembly that comprises a block defining plural openings (Figure 1 (5)) that are closed at one end (when attached to base plate (Figure 1 (6)) and open at another end (when not attached to the membrane (Figure 1 (3))), a closure member to seal the plural openings (Figure 1 (2), (3), and (4)), and a locking device (Figure 1 (19); Abstract). Fernwood et al. further discloses that the closure member comprises a cover member and a seal member wherein the seal member is constructed and arranged to be between the cover and the block (the seal is represented by Figure 1 (4) that is between the cover member represented by Figure 1 (2) and the block that is represented as

Figure 1 (5)). Further, the plural openings comprise perforations that extend completely through the block (Figure 4B), an additional closure member Figure 1 (6)), and the locking device comprises plural fasteners passing through holes extending through the cover, block, and closure (Figure 1 (19)). The seal member comprises a deformable material (Column 4 Lines 4-6) and is fixed to the cover member (when assembled, Figure 1). The seal member may also comprise a membrane (Figure 1 (3)) that covers the openings and is additionally fixed to the cover member when assembled (Figure 1) and when disassembled it isn't fixed to the cover member. There is one closure member provided (Figure 1 (2), (3), and (4)) for sealing the plural openings at the another end of the plural openings (Figure 1) and wherein the cover member comprises a rigid plate (Figure 1 and Column 5 Lines 22-26). The plural openings each have a width-wise dimension and that the block includes plural protruding profiles with a greater width-wise dimension (Figure 4B (11); Column 4 Lines 29-37).

2. Claims 18, 19, 22, 24, and 27-32 [at issue they were renumbered to 1, 2, 5, 7, and 10-15] are rejected under 35 U.S.C. 102(b) as being anticipated by Sanadi, USPN 5,741,463.

Sanadi discloses an apparatus for preventing cross-contamination of multi-well test plates that comprise a block having plural openings (Figure 3 (42), Figure 4 (62), Figure 5 (79), Figure 6 (98), Figure 7 (108), Figure 8 (113), Figure 9 (134)), a closure member to seal the plural openings (Figure 3 (48), Figure 4 (65), Figure 5 (81), Figure 6 (92) and (93), Figure 7 (12) and (105), Figure 8 (112), Figure 9 (138)), a locking device to force the closure member against the block (Figure 3 (50), Figure 4 (68), Figure 8

(116), Figure 9 (140), Abstract), wherein the closure member comprises a cover member and a seal member wherein the seal member is arranged to be positioned between the cover member and the block (seal is (Figure 2 (30); Column 6 Lines 6-67), Figure 3 (45), Figure 5 (77), Figure 7A (301), Figure 9 (137)). The seal comprises a compressible or deformable material (Column 5 Lines 32-34; Column 7 Line 34; Column 9 Line 18), the seal is fixed to the cover member (when assembled as shown in all embodiments), wherein the seal member comprises plural circular disk shaped bodies that are not fixed to the cover (see embodiment of Figures 5, 5A, and 5B where (77) is a disk-shaped seal) and it is fixed to the cover when assembled but are not initially fixed to the cover (Column 9 Lines 9-25). Further, Sanadi discloses a seal member that comprises a membrane (Figure 2 (31), Figure 3 (31), Figure 6 (93), Figure 7A (303), Column 12 Lines 15-17) and is fixed to the cover when assembled but not initially fixed. There is a single closure member provided (in embodiments of Figure 3A and Figure 4). The cover member comprises a rigid plate, as shown and described.

3. Claims 18-20 and 22-24 [at issue they were renumbered to 1-3 and 5-7] are rejected under 35 U.S.C. 102(b) as being anticipated by Manns, USPN 4,948,422.

Manns discloses a method of making a multiwell test plate that comprises a block defining plural openings (Figure 10 the block being (50) or (52) and the openings being (54) or (56)), a closure member (Figures 1, 2, and 10 (20)), and a locking device (Figure 10 (44)). Manns also discloses that the closure member comprises a cover and a seal (the cover being Figure 6 (20) with the seal being Figure 6 (22)). The plural openings have perforations and extend completely through the block. Manns discloses that the

seal and the block comprise a compressible material (Claim 1, Column 6 Lines 18-23 disclose that the trays and sheet are compressed, therefore of a material that can undergo even a slight compression). Under the "compression" the seal member is fixed to the cover member.

4. Claim 18 [at issue it was renumbered as 1] is rejected under 35 U.S.C. 102(e) as being anticipated by Kolb et al., USPN 5,961,926.

Kolb et al. discloses a microplate assembly that comprises a block defining plural openings (Figures 2 and 3 (18) and openings (48)) that are closed at one end (when assembled) and open at another end, a closure member (Figure 2 (20)), and a locking device (Column 5 Lines 40-42).

5. Claim 1 [at issue it was renumbered as 1] is rejected under 35 U.S.C. 102(b) as being anticipated by Mougins, USPN 5,424,213.

Mougins discloses a method for testing the reactivity of cells that comprises a block defining plural openings (Figure 1 (4) and openings (2)) that are closed at one end (when assembled) and open at another end, a closure member (Figure 2 (9)), and a locking device (Figure 2 (7)).

6. Claims 18, 19, 22, 24, 27, 28, and 32 [at issue these were renumbered as 1, 2, 5, 7, 10, 11, and 15] are rejected under 35 U.S.C. 102(b) as being anticipated by Sanadi, USPN 5,342,581.

Sanadi discloses an apparatus for preventing cross-contamination of multi-well test plates that comprises a block defining plural openings (Figure 1 (44), Figure 5 (104), Figure 6, Figure 7 (152) and openings Figure 1 (48), Figure 5 (112), Figure 6

(112), Figure 7 (156)) that are closed at one end and open at another end, a closure member (Figure 1 (60), Figure 2 (96), Figure 5 (120), Figure 6), and a locking device (Figure 5 (124) and Figure 6) wherein the closure member comprises a cover member and a seal member wherein the seal member is arranged to be positioned between the cover member and the block (seal is (Figure 1 (52); Column 4 Line 51-Column 5 20), Figure 4 (88), Figure 5 (116), Figure 6 (128)). The seal comprises a compressible or deformable material (Column 5 Lines 8-12), the seal is fixed to the cover member (when assembled as shown), wherein the seal member comprises plural circular disk shaped bodies that are not fixed to the cover (see embodiment of Figures 13, 13A, and 14 where (248) is a disk-shaped seal) and it is fixed to the cover when assembled but are not initially fixed to the cover (Column 8 Lines 52-60). The cover comprises a rigid plate as disclosed.

7. Claims 18, 19, 25, 26, and 34 [at issue these have been renumbered as 1, 2, 8, 9, and 17] are rejected under 35 U.S.C. 102(b) as being anticipated by Picozza et al., USPN 5,282,543.

Picozza et al. disclose a method a cover for an array of reaction tubes that comprises a block defining plural openings (Figure 5 (10)) that are closed at one end and open at another end (Figure 5), a closure member (Figure 5 (52)), and a locking device (they are held together by friction, Column 6 Lines 12-31). The closure member comprises a cover member and a seal member that are integral in that the cover is the "first seal" between "the upper surface of the mouth of the tube and the portion of the web" and the seal is "the portion of the web around the base of the nodule" (Column 6

Art Unit: 1744

Lines 12-31). The seal member comprises plural spherically-shaped bodies fixed to the cover member and face the another end of the plural openings. These spherically-shaped bodies do not have to be fixed to the cover member as they may be attached adhesively (Column 5 Lines 35-39).

**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (703) 305-7279. The examiner can normally be reached on Monday-Thursday, 7am - 4:30pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8772 for regular communications and (703) 873-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

LCC

LCC  
April 28, 2003

*Robert J. Warden, Sr.*

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